

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PEGGY CARRILLO,

Plaintiff,

vs.

B&J ANDREWS ENTERPRISES, LLC, *et al.*,

Defendants.

Case No. 2:11-cv-01450-RCJ-CWH

ORDER

This matter is before the Court on Plaintiff Peggy Carrillo's Motion for Clarification (#136), filed February 15, 2013.

Plaintiff requests clarification of her deadline to file a response to Defendants' motion for attorney fees (#134). The request is premised on the erroneous belief that there are conflicting orders regarding the deadline for response. In its order (#130), the undersigned set a shortened, specific briefing period for Defendants' motion for fees. Defendants filed a timely motion for attorney fees via the Court's electronic filing system ("CM/ECF"). (#134). Notice of the filing went out electronically. *See* Ex. 1 attached to Pl.'s Mot. (#136). As it always does, the CM/ECF system automatically generated a response date. Now, in an effort to circumvent the Court's previously ordered briefing schedule, Plaintiff's counsel argues that the notice automatically generated by the CM/ECF system constitutes a conflicting court order. The notice automatically generated when a party electronically files a motion is not a court order. Consequently, the Court must determine whether Plaintiff's counsel has demonstrated excusable neglect, pursuant to both Fed. R. Civ. P. 6(b)(1)(B) and Local Rule ("LR") 26-4, for his failure to comply with the ordered briefing schedule.

In evaluating excusable neglect, the court considers: (1) the reason for the delay and whether it was in the reasonable control of the moving party, (2) whether the moving party acted in

1 good faith, (3) the length of the delay and its potential impact on the proceedings, and (4) the
2 danger of prejudice to the nonmoving party. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507
3 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993); *see also Comm. for Idaho's High Desert,*
4 *Inc. v. Yost*, 92 F.3d 814, 825 n. 4 (9th Cir.1996). The reason for delay in this case is, essentially, a
5 calendaring error. Although a weak justification, the Ninth Circuit has determined that a
6 calendaring error likely constitutes excusable neglect. *See e.g., Ahanchian v. Xenon Pictures, Inc.*,
7 624 F.3d 1253, 1262 (9th Cir. 2010). Permitting additional time for Plaintiff to file a response will
8 have minimal, if any, impact on the proceedings in this matter. Additionally, any prejudice to the
9 Defendants can be minimized by extending the time to file a reply.

10 Based on the foregoing and good cause appearing therefore,

11 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Clarification (#136) is **granted in**
12 **part and denied in part.**

13 **IT IS FURTHER ORDERED** that Plaintiff's response to Defendants' motion (#134) shall
14 be filed not later than **12:00 p.m. on Wednesday, February 20, 2013**. Defendants reply, if any,
15 shall be filed by **Monday, February 25, 2013**.

16 DATED this 19th day of February, 2013.

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20 **C.W. Hoffman, Jr.**
21 **United States Magistrate Judge**
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